

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

04-OLR-2

Jodie L. Bednar-Clemens,
Attorney at Law

Attorney Jodie L. Bednar-Clemens served as the Iron County Corporation Counsel while also maintaining a private law practice. This reprimand includes two grievance files in connection with Ms. Bednar-Clemens' handling of three probate estates.

GRIEVANCE NO. 1

A woman died testate in early December, 1997, leaving a son and a daughter. The son resided in Illinois, and the daughter resided in Tennessee. The testator's will nominated the son to serve as personal representative.

The son hired Ms. Bednar-Clemens to probate the estate. On February 2, 1998, Ms. Bednar-Clemens filed a petition for informal administration. For fifteen months, the testator's daughter refused to sign a waiver consenting to her brother's appointment as personal representative. The daughter finally signed a waiver in May, 1999, and the decedent's son was appointed as personal representative. In addition to the joint checking account, the decedent's assets consisted of a residence and stocks.

In late August, 2000, the decedent's daughter retained an attorney in Tennessee to represent her in the estate. In late October, 2000, the personal representative sold the testator's residence. At the time that the house was sold, Ms. Bednar-Clemens billed the personal representative for services regarding the real estate sale, and he paid Ms. Bednar-Clemens' bill.

Shortly thereafter, the personal representative delivered a check for \$62,118.70 to Ms. Bednar-Clemens, representing the decedent's daughter's share of the real estate sale proceeds. The personal representative kept a similar amount of money for his share of the real estate proceeds.

Ms. Bednar-Clemens failed to deposit the \$62,118.70 check into her client trust account and failed to inform the decedent's daughter or her attorney in Tennessee of the receipt of the check. The check was left uncashed in the file.

Between October, 2000 and March, 2001, the Tennessee attorney tried to contact Ms. Bednar-Clemens on multiple occasions to learn the status of the estate, but Ms. Bednar-Clemens did not return the attorney's calls. The Tennessee attorney contacted the Office of Lawyer Regulation (OLR) in March, 2001, when she was unable to determine the status of the estate or learn the whereabouts of the daughter's share of the sale proceeds.

In June, 2001, after contact from OLR, Ms. Bednar-Clemens forwarded the daughter's sale proceeds to the Tennessee attorney. However, the decedent's stock which was in Ms. Bednar-Clemens' possession remained unsold. The personal representative had not been able to get in touch with Ms. Bednar-Clemens for over one year, despite having made approximately a dozen attempts.

Ms. Bednar-Clemens did not file an inventory of the estate, although in December, 1999 and January, 2000, the court sent notices of overdue inventory to her. In November, 2000 and March, 2001, the court also sent notices of delinquent estate to Ms. Bednar-Clemens. Ms. Bednar-Clemens did not respond to any of the notices.

In January, 2002, the court placed the estate on inactive status. On May 14, 2002, substitute counsel was appointed to probate the estate.

Applicable Disciplinary Law

In failing to file an inventory despite receiving reminders from the court, in failing to distribute the daughter's share of the sale proceeds for a seven-month period, in failing to assist the personal representative with the sale of the decedent's stock, and in failing to complete the estate over a four-year period, Ms. Bednar-Clemens violated SCR 20:1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client.

In failing to return approximately a dozen telephone calls from the personal representative in the above estate during a one-year period, Ms. Bednar-Clemens violated SCR 20:1.4(a), which requires a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

In failing to deposit the decedent's daughter's sale proceeds in excess of \$62,000.00 into the client trust account for seven months after Ms. Bednar-Clemens received the funds, Ms. Bednar-Clemens violated that portion of SCR 20:1.15(a) that states "All funds of clients and third persons paid to a lawyer or law firm shall be deposited in one or more identifiable trust accounts..."

In failing to promptly inform the decedent's daughter or her counsel that Ms. Bednar-Clemens had received the daughter's share of the sale proceeds and in failing to deliver the sale proceeds in excess of \$62,000.00 to the daughter's attorney for approximately seven months, Ms. Bednar-Clemens violated SCR 20:1.15(b), which states:

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render a full accounting regarding such property.

GRIEVANCE NO. 2

Records in the Iron County Register in Probate's office indicated that two estates that Ms. Bednar-Clemens was handling had remained open with no inventories on file, despite repeated notices from the court or register in probate regarding overdue inventory and/or delinquent estate. One of the estates was opened in 1995, and the second was opened in 1996. In February, 2002, OLR opened an investigative file regarding Ms. Bednar-Clemens' handling of the two estates.

1995 Estate

In the first estate, the "1995 estate," an Iron County resident died in July, 1995, leaving a will and codicil, naming her husband as personal representative. The testator left her financial assets to her children and grandchildren through specific bequests. The testator bequeathed her furniture and household goods to her children, subject to the right of her husband to use the furniture and household goods as long as he maintained a homestead at their marital home. The testator left the residue of her estate in equal shares to her husband and to her two children (who were from a previous marriage.) At the time of her death, the testator was estranged from her husband, and a divorce was pending in Minnesota.

In July, 1995, Ms. Bednar-Clemens opened a formal probate estate. Although the codicil named the testator's husband as personal representative, Ms. Bednar-Clemens asked the court to appoint the testator's daughter as personal representative, bypassing the testator's husband on grounds that he suffered from senile dementia. Ms. Bednar-Clemens described the husband's alleged mental incapacity in the petition for administration and in a supporting affidavit that was signed by the daughter.

Under sec. 851.21(1)(d), Stats., a person named as personal representative in any document offered for probate as the will of the decedent is deemed a “person interested” under the statutes governing probate. Sec. 879.23(1), Stats. requires that a guardian ad litem be appointed for any person interested in an estate who is an incompetent and has no guardian of his or her estate. Notwithstanding the requirements of the aforementioned statutes, Ms. Bednar-Clemens did not request that a guardian ad litem be appointed to protect the rights of the husband in the estate. Ms. Bednar-Clemens sent copies of relevant probate documents to the interested persons, including the testator’s husband. The husband did not return a signed waiver regarding appointment of the personal representative or objecting to the will.

Ms. Bednar-Clemens states that she did not seek appointment of a guardian ad litem for the testator’s husband because she did not believe that it was necessary to do so. The estate consisted of financial accounts and some household goods, clothing and personal effects of nominal value. Under the will, the children and grandchildren were to receive all of the monetary assets through specific bequests. Ms. Bednar-Clemens concluded that there was no property designated for the husband and that his interest, to the extent that he had any at all under the circumstances, were adequately recognized by giving him notice through sending him the probate documents.

On August 1, 1995, the Iron County Circuit Court appointed the testator’s daughter as personal representative. The deadline for filing claims in the estate was November 2, 1995. No claims or objections were filed in the estate.

By January 25, 1996, the specific bequests and financial accounts were fully distributed, and tax forms were completed. Ms. Bednar-Clemens considered the estate to have been fully administered at that point. It is unknown whether any of the testator’s household goods were

ever distributed to the testator's husband. The testator's husband passed away on September 18, 1997.

The personal representative was required to file an inventory of the estate within six months of appointment. The court and/or the register in probate sent notices of overdue inventory during the months of June, 1996, August, 1996, and September, 1996. Ms. Bednar-Clemens, however, failed to take any further action on the estate from 1996 until 2003.

Ms. Bednar-Clemens acknowledges receiving the notices from the court and the register in probate, but she regarded the preparation and filing of the inventory and final account as a mere formality. When the court discontinued sending notices, Ms. Bednar-Clemens concluded that she could forget about the estate and did so, but she later admitted that there was no justification for her failure to file the documents.

The Iron County register in probate informed staff that Ms. Bednar-Clemens did not file any receipts from the heirs or a proof of publication, and that the estate file contains an inventory, which was never considered "filed" because Ms. Bednar-Clemens did not pay a filing fee. The register in probate also stated that Ms. Bednar-Clemens never presented a final account for the estate.

In January, 2002, the court issued an order to discontinue administration of the estate and placed the estate in an inactive status. In late April, 2003, Ms. Bednar-Clemens filed a motion to reopen and to close the estate. On April 29, 2003, the court issued an order to close the estate.

1996 Estate

In the second estate, the "1996 estate," an Iron County resident died testate in October, 1996, leaving a son and a daughter. Ms. Bednar-Clemens opened an informal proceeding on

November 27, 1996. The court appointed the testator's son as personal representative in late January, 1997. No claims or objections were filed in the estate.

The will provided that the estate be divided evenly between the testator's son and daughter. The estate consisted of a house, stocks, certificates of deposit, a savings account, household furniture, and personal effects. Ms. Bednar-Clemens states that over the course of 1997, she assisted the personal representative in selling the house and the stock. The proceeds of the sales were distributed equally between the two heirs. The personal representative also divided the financial assets between himself and his sister.

The court and/or the register in probate issued notices and reminders to Ms. Bednar-Clemens regarding her failure to file an inventory on July 24, 1997, September 11, 1997, October 16, 1997, November 20, 1997, and March 26, 1998. The court also issued notices of delinquent estate to Ms. Bednar-Clemens on July 24, 1998 and October 2, 1998, but she failed to respond to any of the notices.

The court declared the case to be inactive in November, 1998. The case was reactivated in mid-April, 2003, and the court sent a memo to Ms. Bednar-Clemens requesting documents to close the estate. On April 29, 2003, the court issued an order closing the estate.

The Iron County register in probate informed staff that Ms. Bednar-Clemens never filed receipts from the heirs, a proof of publication or a final account for the estate. The register in probate also stated that Ms. Bednar-Clemens presented an inventory, but it was not filed because no filing fee accompanied it.

Applicable Disciplinary Law

As evidenced by her own admission of unfamiliarity with the probate process, including the process by which to close the estates, by her overall failure to promptly administer the

estates; and by her failure in the 1995 estate to have a guardian ad litem appointed for the decedent's husband, whom her client alleged to be incompetent, when Wisconsin Statute sec. 879.23 provides that a guardian ad litem shall be appointed for any person interested in an estate who is an incompetent and has no guardian, Ms. Bednar-Clemens failed to provide competent representation as required by SCR 20:1.1, which defines competent representation as the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

In failing to file inventories or the documents that were necessary to close the estates for periods of six years in the 1995 estate and for five years in the 1996 estate, despite repeated notices and requests from the court to do so, Ms. Bednar-Clemens violated SCR 20:1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client.

In disregarding the notices of the court and of the register in probate to file inventories in the above estates, Ms. Bednar-Clemens violated SCR 20:3.4(c), which states that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

In accordance with SCR 22.09(3), Attorney Jodie L. Bednar-Clemens is hereby publicly reprimanded.

Dated this 17th day of March, 2004.

SUPREME COURT OF WISCONSIN

/s/ Timothy L. Vocke

Timothy L. Vocke, Referee